

### REMARKS

Claims 14-17 and 20-22 are pending in the present application. Claim 14 is amended to correct a typographical error. No new matter has been added by this amendment. The amended claim and its dependent claims are believed to be in condition for allowance or at a minimum, in better form for consideration on appeal. Entry of the amendment to the file of this application is respectfully requested.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 102 AND 35 U.S.C. § 103

The Examiner has rejected claims 14-17 and 20-22 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,417,576 to Baran ("Baran"). Also, the Examiner has rejected claim 16 under 35 U.S.C. § 103(a) as being obvious in view of Baran.

In particular, the Examiner alleges that Baran discloses a catheter comprising (1) a balloon with an outer surface, which is indicated by reference letter E; (2) a membrane disposed about the balloon, which is indicated by reference letter U and which has a plurality of pores, an outer surface and an inner surface; (3) a reservoir between the balloon's outer surface and the membrane's inner surface; and (4) a sponge coating, indicated by reference letter D, that is disposed upon the membrane's outer surface. (Office Action at page 2-4).

Applicants disagree with the rejections based on Baran since this reference fails to disclose or suggest each an every element of independent claim 14 and its dependent claims 15-17 and 20-22. First, Baran does not disclose a catheter. Specifically, Baran discloses a double-wall surgical or endotracheal cuff in which an external cuff D encircles internal cuff E. (Baran at col. 2, line 64-col. 3, line 1 and Figures 1-3).

Moreover, contrary to the Examiner's position, reference letter U in Baran does not indicate a membrane having an outer and an inner surface as recited in the pending claims. Instead of stating that the item indicated by reference letter U is a membrane, Baran states that reference letter U designates a sponge-like material that is positioned in the space between internal cuff E and external cuff D. (Baran, col. 3, lines 1-5). Baran states this sponge-like material can absorb surgical fluids such as an anesthetic and release the absorbed fluid when the sponge-like material is compressed. (*See, e.g.*, Baran at col. 2, lines 19-27). Thus, reference letter U in Baran does not indicate a membrane. In addition, Baran does not disclose or suggest

that its double-wall cuff includes any membrane, let alone a membrane disposed about a balloon as recited in the claims.

Even assuming *arguendo* that reference letter U in Baran describes a membrane, which it does not, Baran fails to disclose or suggest a reservoir that is disposed between the inner surface of the membrane and the outer surface of the balloon. In particular, Baran does not disclose or suggest that any reservoir is positioned between its internal cuff E and its sponge-like material U. Therefore, even if the sponge-like material indicated by reference letter U is the membrane recited in the pending claims, which it is not, Baran fails to disclose or suggest a reservoir disposed between the inner surface of the membrane and the outer surface of the balloon as recited in the pending claims.<sup>1</sup>

Additionally, contrary to the Examiner's position, the item indicated by reference letter D in Baran is not a sponge coating. (Office Action at pages 2 and 4). Baran describes the item indicated by reference letter D as an external cuff. Baran does not disclose or suggest that this external cuff is a coating. In fact, Baran does not disclose or suggest that its double-wall cuff includes any coating.

Also, with respect to claim 16, this claim is patentable over Baran for the additional reason that Baran does not disclose or suggest the recited percentage of void space.

Therefore, Baran fails to disclose or suggest each and every element of the pending claims. Accordingly, the rejections of claim 14 and its dependent claims 15-17 and 20-22 based on Baran should be withdrawn.

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<sup>1</sup> The Examiner alleged that Applicants have only functionally claimed the reservoir to be capable of containing a biologically active material. (Office Action at page 2). Applicants submit that the reservoir is structurally defined by the outer surface of the balloon and the inner surface of a membrane.

### CONCLUSION

Applicants submit that the present claims satisfy all of the criteria for patentability and are in condition for allowance. Withdrawal of the Examiner's rejections and allowance of the claims of the present application are requested. If any issues remain in connection herewith, the Examiner is respectfully invited to telephone the undersigned to discuss the same. No fee is believed due for the Amendment. Should any fee be required, please charge such fee to Jones Day Account No. 50-3013.

Respectfully submitted,

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